



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/068,507	07/15/1998	VINCENT G. H. ELSINK	1380-122PCT	2387

2292 7590 06/19/2003

BIRCH STEWART KOLASCH & BIRCH  
PO BOX 747  
FALLS CHURCH, VA 22040-0747

EXAMINER

SLOBODYANSKY, ELIZABETH

ART UNIT	PAPER NUMBER
----------	--------------

1652

DATE MAILED: 06/19/2003

35

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/068,507

Applicant(s)

EIJSink ET AL.

Examiner

Elizabeth Slobodyansky

Art Unit

1652

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 30 March 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attachment.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 69-85,87-107 and 109-125.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: Interview Summary (Paper #31)

Art Unit: 1652

Attachment to the Advisory action (Paper #35)

The AF amendment filed March 30, 2003 has not been entered for the following reasons.

The claims as amended would require further consideration and/or search and possibly new rejections. For example, claims 77-78 and 82-84 would require 112, 2nd paragraph, rejection as dependent from canceled claims 69 and 81, respectively, i.e. for being incomplete.

While the substitute Sequence Listing and the computer readable form thereof filed March 30, 2003 are technically good, their entry may introduce a new matter. Applicants state that sequences were changed according to Figure 4. However, they do not show what changes are introduced. Applicants further introduce the sequences derived from GenBank accession Z48542 into the Sequence listing and the claims. Applicants refer to page 3, line 27, of the specification for support (Remarks, page 12). However, said GenBank entry is just mentioned therein. Mere reference to a publication or entry is not a proper incorporation of anything into the application.

With regard to the written description, Applicants argue that the *PlnA* gene is a functional equivalent of the *IF* gene based on the Anderssen et al. paper published in 1998 (Remarks, pages 14-15). They agree that "practitioners in the art of bacteriocin gene expression at one time believed that the product of *PlnA* gene was both a bacteriocin and an inducer of the bacteriocin operon" (page 15, emphasis added). Said

Art Unit: 1652

"time" was on or before the time of the filing at which time the requirements of 112, 1st paragraph, must be satisfied. The point of the written description rejection remains that the diverse genus of each claimed molecule is described by a single representative compound found in *Lactobacillus sake* LTH673. Even taken into consideration *PlnA* gene as a second representative species, this is insufficient to describe the entire structurally diverse genus of IF gene.

Applicants arguments are persuasive with regard to the written description of claims 109-111. However, the claims require the enablement rejection for the reasons of record.

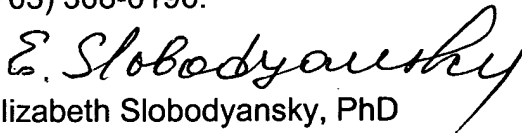
With regard to the 112, 2nd paragraph, rejection, Applicants argue that "IF" is defined because the amino acid sequence of this peptide is given in Figure 2 and in the Sequence Listing (page 24). This is not persuasive because Figure 2 and the sequence in the Sequence Listing define the IF from *L. sake* LTH673. The genus of IF or the genus of *Lactobacillus* IF is not defined. If Applicants define IF as SEQ ID NO:3, they should amend the claims accordingly. However, if there is difference between SEQ ID NO:3 and an IF peptide, it must be defined. With regard to the phrase "of a lactic acid bacterium" on page 12 of the Office action mailed December 31, 2002, the examiner clarifies that the above limitation is confusing because it implies that genes recited in the base claim may derive not from lactic acid bacteria (Remarks, page 25).

Art Unit: 1652

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth Slobodyansky whose telephone number is (703) 306-3222. The examiner can normally be reached Monday through Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Ponnathapura Achutamurthy, can be reached at (703) 308-3804. The FAX phone number for Technology Center 1600 is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Center receptionist whose telephone number is (703) 308-0196.

  
Elizabeth Slobodyansky, PhD  
Primary Examiner

June 18, 2003